

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 396 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

RATILAL VALLABHJI

Appearance:

MR KG SHETH Ld. AGP for Petitioners

MR ASHISH M DAGLI for MR YS LAKHANI for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 13/06/2000

ORAL JUDGEMENT

The appellants, the State of Gujarat and Shri KV Bhanujan, being the Collector of Junagadh District were the defendants and the respondent Ratilal Vallabhji was plaintiff in Special Civil Suit No. 51/1975 decided by the learned Civil Judge (SD) Junagadh on 31.3.1979 in

favour of the plaintiff passing the following order:

"Plaintiff's suit is partly decreed. It is hereby declared that the order of the Collector Junagadh bearing no. land/1/c/3674 dated 27.3.74, and the order of the Special Secretary (revenue Ahmedabad) bearing No. SS-RD-LLD-R-276-74 dated 11.2.75 are illegal and arbitrary. It is also hereby directed that the defendants or their officers may grant occupancy rights to the plaintiff on new and impartable basis at the price prevailing in the market on the date of the plaintiff's application dated 7.5.76 and to consider the market price of the surrounding areas of the suit land of the said period. Defendants or their officers are also directed to assess non agricultural assessment from the year 1966 on the basis of the non agricultural assessment rate prevailing in the year 1965 of the surrounding areas. Plaintiff to pay occupancy price and the non-agricultural assessment as may be fixed by the Collector accordingly.

So far as the declaration regarding the plaintiff having obtained occupancy rights on the basis of notification dated 1.3.50 can not be granted.

Plaintiff to pay deficit court fees stamp u/s. 6 (iv)(a) of the Court Fees Act within 15 days from today.

Looking to the circumstances of this case, each party to bear its own costs.

Pronounced in the open Court.

Date: 31st March, 1979."

The said judgment and order resulting into the decree as per the order have been subjected to challenge in this appeal by the defendant. The parties are referred to as the plaintiff and the defendants in this judgment.

The plaintiff, resident of village Shapur, Taluka Vanthali, district Junagadh, carried on business in edible oil as the manager of Hindu Undivided Family, in the name and style of Gordhandas Jethabhai. His predecessors started factory over a land bearing survey no. 99, admeasuring 1 acre, 10 gunthas situated at

village Shapur. The suit land was transferred by the erstwhile State of Junagadh on yearly rent of Rs. 20-10-0 for a period of 20 years commencing from Jeth Sud 3 of S.Y. 2003. It was the case of the plaintiff that although the Lekh was issued as late as on 20.3.50, it was issued in pursuance of an order passed by the Private Secretary of His Highness Nawab Junagadh bearing Avak No. 630/2002 dated 10.10.46. According to the plaintiff, it was agricultural land transferred to him for being used for non-agricultural purpose viz. running oil mill industry. He was entitled to purchase the said land from the government by virtue of condition no. 2 of the Lekh. According to him, when the State of Junagadh was integrated with the State of Saurashtra on or about 20.1.49, the provisions of Bombay Land Revenue Code came to be adapted and applied to the State of Saurashtra and notification dated 1.3.1950 came to be issued. As per the said notification, full occupancy rights were granted to the holders of agricultural lands. By virtue of the said notification, the plaintiff became the occupant of the suit land admeasuring 1 acre, 10 gunthas, out of land bearing survey no. 99 of Shapur village. The permission to use the land for non-agricultural purpose was merely a condition attached to the grant but the grant was really and in effect the grant of agricultural land assessed to land revenue.

Since the plaintiff felt that he became the occupant of the land in question, he approached the Collector, Junagadh with an application dated 7.5.66 praying for considering him as deemed occupant of the suit land and in the alternative he also prayed that he should be conferred occupancy rights. It appears that after the plaintiff moved the said application, proceedings under sec. 37(2) of the Bombay Land Revenue Code were initiated against the plaintiff and the Collector, Junagadh by his order dated 27.3.74 granted occupancy rights over the suit land to the plaintiff on payment of price of Rs. 7.60ps per sq. yard being the price prevalent in the market on the date of the order of Collector (27.3.74). The Collector held that the grant in favour of the plaintiff was merely a lease for a period of 20 years which commenced from 20.3.50 and lasted till 20.3.70. He therefore, ordered that the non-agricultural assessment should be realized from the plaintiff from the period from 1970-71 to 1972-73. The plaintiff felt aggrieved with the said order and preferred revision application to the Special Secretary (Revenue) of the Government of Gujarat. The said revision application was dismissed on 11.2.1975.

It also appears that the Mamlatdar of Vanthali Taluka issued notice dated 21.8.74 pursuant to the aforesaid order of the Collector requiring plaintiff to pay Rs. 17,399.10ps as non-agricultural assessment for three years from 1970-71 to 1972-73. He also demanded Rs. 45,911-60ps per sq. yard being the market price prevalent on the date of the aforesaid order of the Collector. The Mamlatdar, however, stayed the said recovery at the application of the plaintiff moved on or around 16.9.74 on condition that the plaintiff executed a bond with two sureties for the amount till the hearing and final disposal of the plaintiff's application by the Special Secretary. It is the case of the plaintiff that in case the notice issued by the Mamlatdar is enforced, the plaintiff is likely to suffer eviction from the suit land.

Under the aforesaid circumstances, plaintiff issued statutory notice and filed the present suit before the trial court. The suit was resisted on number of grounds, one of which clearly appears to be with regard to starting point of the period of lease under the Lekh referred to by the plaintiff. Rest of the defence might be noticed from the issues which have been framed by the trial court at exh. 17. Upon appreciation of evidence adduced before the trial court, it has been held that the suit land has been given for non-agricultural purpose on payment of rent, that the plaintiff could not be said to have become occupant by virtue of notification dated 1.3.50 issued by the erstwhile Government of Saurashtra under the relevant provisions of Bombay Land revenue Code, that the impugned order of the Collector, Junagadh confirmed in appeal by the Special Secretary (Revenue) fixing the occupancy price at Rs. 7.60ps per sq. yard would be illegal, that the non-agricultural assessment fixed as per the said order for the period 1970-71 to 1972-73, would also be illegal, that the duration of the lease granted to the plaintiff would expire on Jeth Sud 2 of S.Y. 2022 and not on 19.3.70 as contended by the defendant, that the statutory notice issued by the plaintiff to the defendants was legal and valid, that the plaintiff would be required to pay court fees 6(iv)(a) of the Bombay Court Fees Act and that the plaintiff would succeed in the suit as per the ultimate order. The said order has been reproduced hereinabove.

The present appeal has come up for final hearing. The only question which has been agitated by the learned AGP before this Court is with regard to the commencement of the period of lease as per the Lekh in question. This question can well be decided on a bare look at and upon

consideration of the Lekh which has been placed at exh. 20. Mr KG Sheth learned AGP appearing for the defendants (appellants herein) read the Lekh and submitted that since the date of Lekh is March 20, 1950, the period of 20 years should be counted from that date and not from any other date, even if such date is mentioned in the Lekh itself. As a matter of fact, there is no dispute now about a specific mention having been made in the Lekh itself with regard to the date of commencement of period of 20 years. It recites in clause-(9) as under:

(Gujarati Portion)

It might be noted from the aforesaid condition that the parties have contemplated period of 20 years being reckoned from S.Y. 2003. In that view of the matter, the submission made by the learned AGP contrary to the expressed agreement contained in the aforesaid clause, cannot be accepted. The finding of the trial court in that respect cannot be disturbed.

No other point has been raised in this appeal.

In the result, this appeal is dismissed with no order as to costs.

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